

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 1162

INTRODUCER: Committee on Commerce and Consumer Services and Senators Haridopolos, Crist, and Lynn

SUBJECT: Public Records Exemption

DATE: March 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a public records exemption for “personal identifying information” contained in records maintained by the Department of Agriculture and Consumer Services (DACCS) concerning applicants for and recipients of a concealed weapon permit. This bill provides that the exempt information may be provided with the written consent of the applicant, upon written request of a law enforcement agency, and by court order upon a showing of good cause. The bill also provides for future legislative review and repeal. Further, the bill provides that the Legislature finds that it is good public policy to provide safeguards to protect those who have applied for or received a license to carry a concealed weapon, and that the exemption is a public necessity to protect sensitive personal information.

This bill creates section 790.0601 of the Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records

exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge....”²

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995³ establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁴

Section 119.15(6)(a), F.S.,⁵ requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

¹ Chapter 119, F.S.

² *Shevin v. Byron, Hairless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

³ Section 119.15, F.S.

⁴ Section 119.15(3)(b), F.S.

⁵ Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).

- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.” Is the record or meeting protected by another exemption?
- The exemption “[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”⁶

Exempt Personal Identifying Information

Social Security numbers,⁷ credit and debit cards⁸, and bank account⁹ information are exempt from public disclosure. Additionally, personal information contained in a motor vehicle record that identifies the subject in the record is exempt from disclosure.¹⁰ Exempt information includes driver’s license and identification card numbers.¹¹

Concealed Weapons License

The Department of Agriculture and Consumer Services (DACCS) is authorized to issue concealed weapon licenses to those applicants that qualify.¹² A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.¹³ To obtain a concealed weapons license, a person must complete, under oath, an application that includes such personal information as their name, address, place and date of birth, race, and occupation.¹⁴

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.071(5)(a)3, F.S.

⁸ Section 119.071(5)(b), F.S.

⁹ *Id.*

¹⁰ Section 119.0712(2), F.S.

¹¹ *Id.*

¹² Section 790.06(1), F.S.

¹³ *Id.*

¹⁴ Section 790.06(4)(a), F.S.

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph¹⁵ of the applicant.¹⁶ The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.¹⁷

From 2005 to 2006, the department received 30,267 new applications and 34,182 renewal applications. Of those, the department issued 29,235 new licenses and 34,093 renewal licenses.¹⁸

III. Effect of Proposed Changes:

Section 1 creates s. 790.0601, F.S., to provide a public record exemption for "personal identifying information" contained in records that are maintained by DACS concerning applicants for a license to carry a concealed weapon or individuals who have already received a concealed weapons permit. However, this information may be released:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon written request by law enforcement in connection with an active criminal investigation.

This bill provides that the public records exemption for personal identifying information contained in records by DACS concerning applicants for a concealed weapons license is subject to the Open Government Sunset Review Act. The public records exemption will be repealed on October 2, 2011, unless reviewed and saved from repeal.

Section 2 provides that the Legislature finds that there is a public necessity to exempt from public disclosure all personal identifying information contained in records by DACS regarding applicants for and recipients of a concealed weapons license. The Legislature further finds that the release of this information defeats the purpose behind the authorization to carry a concealed weapon.

¹⁵ The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

¹⁶ Section 790.06(5), F.S.

¹⁷ Section 790.06(4), F.S.

¹⁸ "Concealed Weapon / Firearm Summary Report," viewed February 15, 2006, http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

Section 3 provides an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption to protect information maintained by the Department of Agriculture and Consumer Services of applicants for and recipients of a concealed weapons permit. This bill provides for future review and repeal of the exemption on October 2, 2011, and provides a statement of public necessity.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, DACS receives requests of approximately 19 to 24 CD ROMS of the information covered by this exemption. The department would not likely be furnishing the information requested if the bill is enacted, insofar as most requests would not meet the statutory criteria for release (written consent, court order, law enforcement with active investigation) but the department may have to respond to the requests for information by denying the requests. Therefore, DACS may have a decrease of \$4,680 in revenue per year -the costs associated with providing the information, paid by the recipient- and a corresponding decrease in costs associated with providing this information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
